

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY
PATENT LITIGATION

MDL No. 1592 (MLW)

This Document Relates To All Actions

[PROPOSED] ORDER OF DISMISSAL

The Court, having already entered Orders dismissing some of the declaratory relief claims in this multidistrict litigation that the parties agree should be dismissed pursuant to the Memorandum and Order dated November 5, 2004, in which the Court allowed the Emergency Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by The Trustees of Columbia University in the City of New York on September 2, 2004, now hereby ORDERS the dismissal of the remainder of the declaratory relief claims in this multidistrict litigation, as follows:

The following claims are hereby dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1):

- *Immunex Corp. and Amgen Inc. v. Columbia University*, Case No. 04cv10740 MLW:
 - First Claim For Relief: Declaratory Judgment that Amgen and Immunex Owe No Royalties (28 U.S.C. § 2201);
 - Third Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Because the '275 Patent Is Unenforceable By Reason of Inequitable Conduct (28 U.S.C. § 2201); and
 - Seventh Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Based on Columbia's Failure to Perform Condition (28 U.S.C. § 2201).

- *Biogen IDEC MA, Inc., Genzyme Corp., and Abbott Bioresearch Center, Inc. v. Columbia University*, Case No. 03cv11329 MLW, as to Biogen IDEC MA, Inc. and Genzyme Corporation:
 - Count I: Declaration Under the License Agreements; and
 - Count V: Declaration of Exceptional Case.
- *Wyeth and Genetics Institute LLC v. Columbia University*, Case No. 03cv11570 MLW:
 - Fourth Claim For Relief: Declaratory Judgment that Wyeth Owes No Royalties Under the '275 Patent or Any Pending Related Application;
 - Fifth Claim For Relief: Declaratory Judgment that Wyeth Has No Contractual Royalty Obligation Because the License Agreement Does Not Provide For Royalty Payments Based on Pending Patent Applications; and
 - Sixth Claim For Relief: Declaratory Judgment that the '275 Patent Is Unenforceable By Reason of Patent Misuse.

Dated:

HON. MARK L. WOLF
UNITED STATES DISTRICT JUDGE